

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

2004 JUN -9 P 4:39

MAUREEN SULLIVAN-STEMBERG

Plaintiff,

v.

TURNER CONSTRUCTION COMPANY,
NISHIMATSU CONSTRUCTION CO., LTD.,
RAYMOND DEVELOPMENT, INC.,
MNOP CORPORATION,
JOHN F. HAYES, INDIVIDUALLY AND AS
PRESIDENT OF MNOP CORPORATION, AND
FLAGSHIP WHARF CONDO ASSOCIATION

Defendants.

U.S. DISTRICT COURT
DISTRICT OF MASS.

Civil Action No.
04-10298 WGY

**TURNER CONSTRUCTION COMPANY'S MOTION TO DISMISS
THE PLAINTIFF'S COMPLAINT**

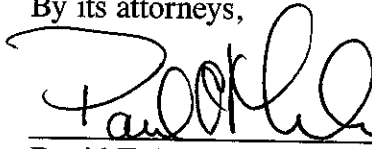
Defendant Turner Construction Company ("Turner") moves this Court to dismiss Counts I, II and III of the Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted. Turner brings this motion because the M.G.L c. 260, § 2B bars the plaintiff's negligence and implied warranty counts, and the plaintiff's complaint fails to adequately establish the express promise necessary to maintain an express warranty action.

REQUEST FOR ORAL ARGUMENT

Pursuant to Fed. R. Civ. P. Local Rule 7.1(D), Turner hereby requests an oral argument regarding this motion.

TURNER CONSTRUCTION COMPANY,

By its attorneys,



David E. Rosengren (BBO #652935)

Paul O. Mulroney (BBO #564785)

Pepe & Hazard LLP

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Dated: June 9, 2004

Certification Under Local Rule 7.1

I, David Rosengren, certify that I conferred with Plaintiff's counsel, Neil Cohen, in an attempt to resolve or narrow the issues presented by this motion but we were unable to do so.


POM

Certificate of Service

I certify that on June 9, 2004, I served a copy of the foregoing document on counsel of record for all other parties by hand delivery.

